EXHIBIT A

13:12:40

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MIXING & MASS TRANSFER TECHNOLOGIES, LLC,

Plaintiff,

v.

SPX CORPORATION, et al.

Defendant.

C.A. No. 19-529-MN

Friday, January 17, 2020
10:00 a.m.
Oral Argument

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE MARYELLEN NOREIKA
United States District Court Judge

APPEARANCES:

STEVENS & LEE
BY: STACEY A. SCRIVANI, ESQ.
BY: JEFFREY D. BUKOWSKI, ESQ.

-and-

KENT FRANCHISE LAW
BY: JOHN W. GOLDSCHMIDT, ESQ.

Counsel for the Plaintiff

APPEARANCES CONTINUED:

SHAW KELLER LLP
BY: JOHN W. SHAW, ESQ.

-and-

BAKERHOSTELTER
BY: KENNETH SHEEHAN, ESQ.
BY: WILLILAM T. DeVINNEY, ESQ.

Counsel for the Defendants

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09:46:54 **THE COURT: Good morning. Please be seated.**

09:59:25 **Okay. Let's start with some introductions.**

09:59:29 **MS. SCRIVANI: Good morning, Your Honor. On**

09:59:31 **behalf of the plaintiffs, Mixing and Mass Transfer**

09:59:36 **Technologies, Stacey Scrivani from the law firm of Stevens &**

09:59:38 **Lee. And I have with me my colleague, Jeffrey Bukowski who**

09:59:42 **will be arguing today and John Goldschmidt from the Kent**

09:59:46 **Franchise law firm.**

09:59:47 **THE COURT: Welcome to you.**

09:59:49 **MR. SHAW: Good morning, Your Honor. John Shaw**

09:59:53 **for defendant SPX. Joining me from BakerHostelter is Ken**

09:59:57 **Sheehan, Bill DeVinney and from SPX, Kevin Clement.**

10:00:03 **THE COURT: Good morning to all of you as well.**

I have reviewed all of the papers. But I wanted to get you in here to see if there was anything else that you wanted me to focus on or to give you a chance to argue your case.

MR. SHEEHAN: Thank you, Your Honor. Should I proceed?

THE COURT: Yes, please.

MR. SHEEHAN: We do have the PowerPoint presentation and a copy was provided.

THE COURT: Thank you.

MR. SHEEHAN: So Your Honor, this is a motion to dismiss. The motion to dismiss is basically a Rule 12(b)(6) based --

THE COURT: Yes, I have read all the papers. You don't have to give me that background, I got it. I read the complaint and the different counts and the release.

MR. SHEEHAN: This is the language of the -- the operative portion of the agreement which contains the general waiver of release language. I did excerpt that in the PowerPoint presentation, but the place to start is the law, we pointed in our brief and the cases, and I believe all of the cases irrespective of which side cited the cases, if you read the cases they all stand for the proposition that under Pennsylvania law, which is the operative law governing this agreement, the effect of the release is

10:01:33 determined by the plain language of the agreement. As the
10:01:37 Supreme Court of Pennsylvania pointed out, the intent of the
10:01:41 parties is not relevant to that, otherwise it would be
10:01:45 rewritten, it can be set aside one of the parties had
10:01:49 changed their mind. So we do have to focus on the plain
10:01:53 language of the agreement and what I have excerpted out in
10:01:56 this slide is the operative language relevant to this
10:02:00 particular case.
10:02:00 As we see, MMT and McWhirter hereby forever
10:02:07 knowingly, voluntarily and reputably release, remise,
10:02:12 discharge and acquit SPX together with any subsidiaries
10:02:15 successor in interest from without any limitation any and
10:02:18 all claims whether accrued or unaccrued, known or unknown,
10:02:22 suspected or unsuspected. And then importantly,
10:02:25 specifically--
10:02:26 THE COURT: But what you left out was that
10:02:30 plaintiff, the parties, MMT, has or could have asserted or
10:02:39 could assert as of the effective date of this agreement.
10:02:42 And the patent claims, I understand your position, the
10:02:45 patent you're accused of infringing and the patent they want
10:02:48 declaratory judgment on, those patents were known, and the
10:02:52 product that's being accused of infringement was known, so I
10:02:55 understand how you would fit within that plain language.
10:02:58 But if you're telling me that this is a case on the plain
10:03:01 language, you need to explain to me how the other counts

10:03:05 fall within there.

10:03:07 MR. SHEEHAN: Yes. And the other counts fall
10:03:09 within the language at the end of this slide, the bottom, I
10:03:13 would say probably the clearest would be the section D, the
10:03:16 very end, it says any claims concerning the SPX party's
10:03:21 future activities with respect to technology of which the
10:03:24 MMT parties knew. The A245 impeller was clearly technology
10:03:30 that the MMT parties knew about at the time of the agreement
10:03:34 because it's identified specifically in the agreement. And
10:03:37 that's --

10:03:38 THE COURT: But isn't it their position, again,
10:03:41 you know, the contract is ambiguous or if there is a
10:03:47 reasonable interpretation that plaintiffs can give, then I
10:03:50 can't on the motion to dismiss decide it. And my question
10:03:53 is, is D standalone or is it still part of the, that could
10:03:59 have -- was asserted, could have asserted or could assert as
10:04:04 of the effective date?

10:04:07 MR. SHEEHAN: This is similar to the argument
10:04:09 that was made in the *Augustine* case that we cite that was
10:04:14 the Federal Circuit, they made the identical argument that
10:04:19 there was language --

10:04:20 THE COURT: The language was different in that
10:04:21 case, and they could have asserted as of the effective date.

10:04:26 MR. SHEEHAN: In the *Augustine* case there is a
10:04:28 section that does point out that the argument was made that

there is language that could have been made as of the effective date of the agreement. There is language to that effect in that case. And what the Federal Circuit found is notwithstanding that language, you have to look at what the clear language of the agreement provides and if the clear language of the agreement provided a release of future claims, there is a release of future claims. And here that provision does stand alone. Clearly if you read that provision it says any claims concerning the SPX party's future activities. So it's not future claims, it's not claims that they may make in the future based upon past activities that occurred prior to the settlement agreement, that provision is very clear, it says claims concerning the SPX's party's future activities. Future activities can only occur after the settlement agreement is signed. So there is a release of claims relating to activities that occurred after the agreement had been signed.

THE COURT: But it's only those that they knew or could have known from provided information or publicly available information; right?

MR. SHEEHAN: No, that provision --

THE COURT: I'm just reading what you have here on the chart in front of me. Isn't that D? The MMT parties knew, you have D... It says knew or could have known from provided information or publicly available information.

10:05:55 **MR. SHEEHAN: Yes, and they knew the A245**
10:05:58 **patent, the 8 --**
10:05:59 **THE COURT: I already told you, I get it. I**
10:06:01 **understand the patent. You don't have to argue the patent**
10:06:04 **issue. They have to explain the patent issue to me. You**
10:06:07 **need to explain to me the Lanham Act issue where they say,**
10:06:12 **you know, you are out there making statements that**
10:06:16 **apparently, though, they don't give me any date, apparently**
10:06:19 **after this fact, that were untrue. And so false advertising**
10:06:25 **about your product, false statements about their product.**
10:06:28 **So what is it that -- how is it that that falls clearly**
10:06:34 **within the language that -- I'm not saying that they're**
10:06:37 **going to win, but how does it fall clearly within that you**
10:06:41 **get a win on a motion to dismiss?**
10:06:44 **MR. SHEEHAN: Let me jump ahead to Count 2.**
10:06:47 **There are two parts of the Lanham Act claims. I don't think**
10:06:50 **you're really focusing on the first part because that**
10:06:53 **relates to past activities, but just for completeness let me**
10:06:57 **address it and that relates to statements made to the Patent**
10:07:00 **Office regarding the '711, '844, that patent existed.**
10:07:03 **THE COURT: I know the statements had been made.**
10:07:04 **I got it, that's parts of Count 5.**
10:07:06 **MR. SHEEHAN: So the second part, though, is the**
10:07:10 **statements that relate -- it's purely that language patented**
10:07:14 **technology that shows up on our website on the page relating**

10:07:17 to the A245.

10:07:19 THE COURT: But the patent technology, I think

10:07:21 it also says something like --

10:07:36 MR. SHEEHAN: I believe that is the sum and

10:07:37 substance of it.

10:07:39 THE COURT: That is the basis, but it says, I am

10:07:41 looking at in Count 2, paragraph 75, defendants have

10:07:45 asserted among other things that defendants rather than M2T

10:07:49 are authorized to make, use, market and sell patented

10:07:54 surface aeration impeller that otherwise infringes the

10:07:59 patent.

10:07:59 MR. SHEEHAN: And what the plaintiffs --

10:08:00 THE COURT: I wasn't sure if that's suggesting

10:08:02 that you're saying something about their product.

10:08:04 MR. SHEEHAN: No. What they are suggesting in

10:08:07 their complaint is that because we say patented technology,

10:08:11 the public will jump to the conclusion that because our

10:08:15 product looks like what's in their patent that that must be

10:08:18 the patent that it relates to and, therefore, we must be

10:08:21 using their technology. It must be theirs. So there is a

10:08:25 lot of assumptions that they make. But it's purely the

10:08:29 language "patented technology" is what they're focusing on

10:08:31 and the fact that it says patented technology.

10:08:34 So I think those claims should be dismissed for

10:08:37 several reasons. One, I do believe they fall within the

clear language of the agreement, particularly that Section D, which is future activities relating to the A245 product, that is the technology which is the A245 technology. Also --

THE COURT: Was the A245 referred to as patented technology back at the time the agreement was filed, or signed?

MR. SHEEHAN: Your Honor, I don't know. I don't know whether the -- there was a split in the company, they divided out into two different companies. I don't know what was on the web page back at that time. It may have been, it may not have been. I don't know. But the statement now, one thing I will also point out there is nothing false about that statement. Taking the complaint on its face and of course assuming that everything in there is correct, they're asserting that the A245 product is infringing on their patent. It's covered by their patent. So this is patented technology. It's patented technology that we have an authorization to use. We have a release, a waiver and release of past, present and future claims regarding that infringement by that product of their patents. So we have an authorization to use that patent. It is patented technology. Their patent. So there is nothing false about the statement patented technology. But beyond that, as I said --

10:10:09 **THE COURT: Well, presumably you dispute the**
10:10:12 **fact that their patent covers it or don't you?**
10:10:16 **MR. SHEEHAN: At this point we're asserting we**
10:10:20 **have a release with respect to that patent and that**
10:10:22 **technology. And at that point, you know, we look at the**
10:10:26 **complaint, taking the statements in the complaint as true**
10:10:31 **for purposes of this motion, they're asserting that the**
10:10:36 **patent covers their -- that patent covers the A245 product.**
10:10:41 **THE COURT: Okay.**
10:10:42 **MR. SHEEHAN: But again, I would point to that**
10:10:45 **Section D, irrespective of the language. And again, looking**
10:10:47 **at the *Augustine* case, Federal Circuit does address that**
10:10:51 **identical argument that the --**
10:10:53 **THE COURT: But the Federal Circuit was looking**
10:10:55 **at it in connection with patent claims, then patent issues,**
10:10:59 **infringement issues that had already been made, and whether**
10:11:03 **new acts of infringement were different; right? They**
10:11:07 **weren't talking about a Lanham Act claim where potentially**
10:11:13 **things change in what you were saying from the time of the**
10:11:16 **agreement to now.**
10:11:19 **MR. SHEEHAN: That is one of the -- the primary**
10:11:22 **argument or the primary issue that was being addressed in**
10:11:26 **that case, yes.**
10:11:27 **THE COURT: Okay.**
10:11:30 **MR. SHEEHAN: I don't want to say there wasn't a**

Lanham Act because I think there may have been, but not -- I don't think it's relevant to that issue. But again, the court in that case did look at that language, specifically that language, you know, that there is -- you know, that the release was specific to claims that existed prior to the settlement agreement, and the Federal Circuit found that doesn't trump the clear language of the agreement and when you're having clear release of future claims.

And again, there is two statements that we're focusing on here. One is any current or future claims concerning the A245 impellers, but even clearer than that one is Section D which is any claims concerning the SPX party's future activities. So clearly the future activities relating to technology that they knew about. And they knew about the A245 impeller.

THE COURT: But it can't possibly be that you're saying that language, they knew about the A245 impeller so you could say whatever you wanted, you could come in and just make up the biggest fat lie and tell customers and compete with them, but because they released the A245 impeller. I mean, there are limits to that; right?

MR. SHEEHAN: I won't speculate as to what the limits would be. Certainly we can't commit antitrust violations because there are cases that specifically say you can't release future claims with respect to antitrust

violations. This is not an antitrust violation. There have been no cases cited nor am I aware of any that say you can't release future claims of unfair competition and Lanham claims. So this particular party has released any claims regarding that technology.

THE COURT: Again, though, I still think that the problem I'm having is you need it to be so clear in the agreement, and yet the portion of the agreement that you're showing me has all kinds of ellipses in it that take out the parts and portions that they're going to rely on including the parts of things that could have been brought at the time and that they knew or could have known language at the end of part D. So to me, I'm not sure I'm following how the language is that clear that you can prevail on a motion to dismiss. I'm not saying you can't prevail and you won't likely prevail later down the road, but, you know, motion to dismiss is a pretty early stage.

MR. SHEEHAN: I understand. And I would assert, though, that the opposite is true, that we have a very broad release. We look at the cases that talk about this, such as the *Augustine* case and some of the other cases, we have broad release language, and when you have broad release language and the broad release language is language that, you know, whether accrued, unaccrued, known or unknown, suspected or unsuspected, and the court has found -- if we

look at the second bullet point here under Pennsylvania law, the language known and unknown claims amounts to the same thing as ever had, now have or which they hereafter can, shall or may have. This is right out of the *Three Rivers* case, the Third Circuit case. We have got broad release language here. And when we have got broad release language the cases say that it's --

THE COURT: Yes, but the language that comes after the known or unknown, unsuspected or suspected, still it says that the MMT parties have asserted, could have asserted or could assert as of the effective date. It doesn't stop with known or unknown claims. It says those claims that could have been asserted as of the effective date.

MR. SHEEHAN: Yes. And what I would say is the provision at the end in Section D says any claims concerning SPX party's future activities. And is there an inconsistency there? Well, the clear language of Section D says it's releasing claims relating to future activities.

THE COURT: I mean, I can think of ways that that applies, right, if you continue to do things in the future that have been released, you know, that could include future activities. I'm just saying I don't know that the language is as clear as you are saying it is.

MR. SHEEHAN: Again, Your Honor, I don't want to

repeat the same --

THE COURT: Right, I know. But part of the problem I'm having is every time you cite me a case or you cite something, you're leaving out portions of it. And you need to address the portions that I am concerned about because I am trying to understand if the agreement really is that clear.

MR. SHEEHAN: And again, what I would point back to is the *Augustine* case. The *Augustine* case again addresses this specific issue of language just like that on language that talks about or could assert as of the effective date and the Federal Circuit in that case said well, yeah, we see it says that, but you know, if you look at the language of the agreement and in the language of the agreement it's clear that we're releasing -- that there is a release of future claims here. And we believe that the -- you know, the releases of future claims, again, the provision that says they're releasing future claims relating to the A245 impellers. That's very clear. They're releasing claims relating to the A245 impellers. They're releasing claims relating to future activities. I believe that language, our position is that that language is clear. This is a release. This was intended to be a very broad release that the case law says you're allowed to do that. You're allowed to release things beyond what was in the

prior case as long as your intent was clear that you are releasing everything.

And I would say also that the law is also clear that if you are intending to carve something out, when you got broad release language, this is that broad release language of known, you know, known, accrued, unaccrued, when you got broad release language like that, it's the obligation of the party who is trying to carve something out of that to make it manifest, that intent to carve something out.

THE COURT: Let me ask you a question, *Augustine* that you're relying so heavily on, was that in the motion to dismiss or was that a summary judgment?

MR. SHEEHAN: That was a summary judgment, but it also said it was an issue of first impression. This issue of whether you can release first patent claims was an issue of first impression, it expressly says this is an issue of first impression, I think that was probably why it was summary judgment as opposed to motion to dismiss.

THE COURT: But still that's the case you're relying on most heavily and it didn't support me granting a motion to dismiss, it was dealt with on summary judgment.

MR. SHEEHAN: No, I believe the other cases we cite do support motion to dismiss based on a settlement agreement. You can move under 12(b)(6) when you have got a

10:18:56 settlement agreement that covers the claims at issue, and
10:18:59 here we have a settlement agreement that covers the claims
10:19:01 at issue.
10:19:02 THE COURT: Okay.
10:19:04 MR. SHEEHAN: Thank you, Your Honor.
10:19:05 THE COURT: Thank you.
10:19:17 MR. BUKOWSKI: May it please the Court, Your
10:19:21 Honor. My name is Jeff Bukowski on behalf of the plaintiff.
10:19:25 THE COURT: How is it that you can read these
10:19:27 patent claims given that release?
10:19:29 MR. BUKOWSKI: Your Honor, the Court correctly
10:19:33 pointed out the missing language in the slide that is in the
10:19:39 release provision.
10:19:41 THE COURT: But the patent was known, the
10:19:43 product was known, and now you say, oh, now we want to
10:19:46 assert infringement of that patent that was known at the
10:19:52 time it existed, and that the product -- against a product
10:19:56 that was known at the time, how does that not fall within
10:19:59 the clear language of a claim that could have been asserted?
10:20:04 MR. BUKOWSKI: There is no evidence that the
10:20:05 product, the accused infringing product was known at the
10:20:08 time. We know there was an A245.
10:20:10 THE COURT: You know the product was known, it
10:20:12 is mentioned. It's not like you said hey, we don't know
10:20:16 they were coming out with an A245 impeller. It's specified

10:20:20 in the product. And it says as described in an attachment
10:20:24 A.
10:20:24 MR. BUKOWSKI: There is nothing in attachment A
10:20:24 on the A245, it's not mentioned, it's not described, and
10:20:24 that's a fatal flaw that it is not described. I do not know
10:20:38 and I do not want to represent to the Court that the A245
10:20:41 then was different than the A245 now. I don't know that.
10:20:46 But I know that it's not described in attachment A of the
10:20:53 settlement agreement, and therefore, defendants cannot rely
10:20:56 on that provision because subsection C fails if it's not
10:21:02 described.
10:21:04 THE COURT: Yes, I don't know that I agree with
10:21:06 that. It says you're releasing all claims about the A245
10:21:10 patent, and -- I'm sorry, the A245 impeller, and now you're
10:21:16 asserting infringement for a patent that existed as of the
10:21:19 time. I'm just not sure I understand what your argument is
10:21:23 as to how that doesn't fall within the plain language.
10:21:27 MR. BUKOWSKI: And the answer to that is, Your
10:21:28 Honor, the key language is as of the effective date of this
10:21:31 agreement. So even assuming for purposes of this argument
10:21:36 that the A245 was being sold in its identical configuration
10:21:43 to today, only patent infringement claims for those sales
10:21:51 would be released, and any --
10:21:53 THE COURT: Well, that's the *Augustine* case.
10:21:55 You're not going to win that one. That one the Federal

10:21:58 Circuit has dealt with.

10:21:59 MR. BUKOWSKI: Well, *Augustine* is
10:22:00 distinguishable. And it only came up in defendant's reply
10:22:08 brief, so I want to take this opportunity to raise --
10:22:11 identify two cases that do distinguish *Augustine* which are
10:22:24 *Diversified Dynamics Corp. v. Wagner Spray Tech Corp.*, which
10:22:29 is 106 Federal Appendix 29, a Federal Circuit 2004 case.
10:22:41 And *Cook, Inc. v. Endologics, Inc.*, which is 2012 Westlaw
10:22:48 2682749, which is a Southern District of Indiana case,
10:22:57 July 6th, 2012. And both those cases distinguish *Augustine*,
10:23:03 and significantly the *Diversified* --

10:23:06 THE COURT: On what basis? Tell me what basis
10:23:09 they distinguish it on.

10:23:12 MR. BUKOWSKI: The language of the release is
10:23:14 different and more broad in *Augustine* than it was, and the
10:23:18 cases -- in those cases the release language is much closer
10:23:24 to the language in the current case, the release language in
10:23:30 our case. And the significant fact that the court relied on
10:23:36 in *Augustine* was the fact that the prior lawsuit involved
10:23:44 the very patent infringing product that was involved in the
10:23:49 second lawsuit, and the releasing party in that lawsuit was
10:23:56 aware of that infringing technology and, therefore -- and
10:24:03 that was a significant factor in *Augustine*, and the court
10:24:07 makes that very well-known.

10:24:09 Secondly, none of the cases cited by defendants

included in the settlement agreement a no cross-licensing provision. And SPX's interpretation of this settlement agreement writes that right out of the settlement agreement. It has no meaning if their interpretation of the release precludes claims, patent infringement claims that infringe on the '959 patent that accrued after the effective date of the settlement.

THE COURT: All right. Tell me about the '844 patent, why you think you can raise claims about that and things that happened in the prosecution of that patent back in 2000, whatever, well before the settlement agreement was signed.

MR. BUKOWSKI: We concede that that claim should not move forward unless, and all I will say unless defendants attempt to use the '844 patent in the defense of the claim, and then we would have the right under the settlement agreement to raise the invalidity of that patent.

THE COURT: And then why then if that claim you concede shouldn't go forward, why should your false, your Lanham Act claims or unfair competition claims that are based on them saying that their technology is patented, which you're now allowing that they have a patent that you're not challenging, why do those claims get to go forward?

MR. BUKOWSKI: They're claiming that it's our

patent and it's misleading that the A245 is patented. If it's patented, they're referring to our patent, the '959 patent. At least that's what we believe a reasonable interpretation of that language is. And it has come to light since the filing of the complaint that there are other statements regarding the A245 that are not in evidence or before the Court that we will be able to show about their SPX's rights, alleged rights to sell that A245 patent and how they obtained those rights.

Significantly -- and the Court put its finger on the issue, on Section 4.1(d) by its very language raises fact questions as to what the M2T parties knew or could have known from provided information or publicly available information, but more importantly and I think the Court pointed that out, all of sections 4.1(a), (b), (c) and (d) relate back to that key language which is asserted, could have asserted or could assert as of the effective date of this agreement which is omitted from the PowerPoint presentation. And that's the key language.

The sentence goes on to say, this includes by reference, so it's clearly a reference back in all of 4.1(a), (b), (c), and (d) to this meaning claims that could have been asserted as of the effective date of the agreement.

THE COURT: And your position is that that's

clear, but at the very least it raises an issue that can't be determined on a motion to dismiss. Right?

MR. BUKOWSKI: Correct. And I would point out, and the Court pointed out that *Augustine* itself was a summary judgment case, not a case on a motion to dismiss. The *Diversified Dynamics* case, and I have a copy to hand up if Your Honor would want one.

THE COURT: Sure.

MR. BUKOWSKI: And of the *Cook* case and I'll provide it to counsel. *Diversified Dynamics* reversed summary judgment, and the *Cook* case the court denied summary judgment. So those also are summary judgment cases.

If I may, Your Honor?

THE COURT: Yes, please.

You even gave me your notes.

MR. BUKOWSKI: I did.

THE COURT: Okay.

MR. BUKOWSKI: That's all I have unless the Court has further questions, Your Honor.

THE COURT: No, I don't. Thank you very much.

MR. SHEEHAN: Thank you, Your Honor. I just have a few points, unless the court has questions.

The first is one of the statements that Mr. Bukowski made is that we're claiming that the A245 patent is covered by their patent. That's not our

10:29:57 assertion. Our assertion is that the complaint asserts that
10:30:00 the A245 patent is covered by their product so for purposes
10:30:04 of this motion the Court should take the complaint, the
10:30:08 statements in the complaint as true for purposes of deciding
10:30:11 whether that statement, patented technology is false. I'm
10:30:15 not saying that if the case goes forward we would not assert
10:30:18 that the A245 is covered by our own patents, but again,
10:30:22 that's not an issue for this case.
10:30:25 I did not get an opportunity to read either of
10:30:27 the cases that were cited by Mr. Bukowski other than just
10:30:32 real briefly. This *Diversified* case, I do note in this case
10:30:37 it does say that the -- this second suit was a suit on a
10:30:43 different patent and different products. And so presumably
10:30:47 reading this case it's dealing with an issue that was not --
10:30:52 that was not an issue that the parties were aware of at the
10:30:56 time when they entered into that agreement which would be a
10:30:59 basis on which to distinguish the *Augustine* case, except
10:31:04 when you got language and there are cases that we cited that
10:31:07 point out that if you got broad language that intends to
10:31:10 release claims that you're not aware of, any claims between
10:31:14 the parties, that controls what we have here. We have broad
10:31:18 language, for example, accrued, unaccrued, known, unknown
10:31:23 claims, therefore the release applies to those claims
10:31:25 whether they knew about them or didn't know about them.
10:31:27 THE COURT: Okay.

10:31:30 MR. BUKOWSKI: Only very briefly, Your Honor. I
10:31:34 do just want to make it clear for the record that the prior
10:31:38 suit did not involve the A245 or the product under the '959
10:31:45 patent. It was a different M2T impeller and a different SPX
10:31:51 impeller. So those were different products. That's all.
10:31:54 THE COURT: Okay. It's your motion, I don't
10:31:57 know that you need a last word, but I will give it to you if
10:32:00 you want it.
10:32:01 MR. SHEEHAN: No, Your Honor, I think the cases
10:32:02 address that issue.
10:32:03 THE COURT: Okay. So thank you for the
10:32:05 arguments. They were helpful to me.
10:32:11 Plaintiff's complaint asserts claims for patent
10:32:13 infringement; unfair competition under the Lanham Act; false
10:32:15 advertising and false designation of origin under the Lanham
10:32:19 Act; common law unfair competition; declaratory judgment;
10:32:23 and unjust enrichment under state law.
10:32:25 Defendants have moved pursuit to Rule 12(b)(6)
10:32:28 to dismiss the Complaint in its entirety for failure to
10:32:32 state a claim. The basis of its motion as to all counts is
10:32:36 the argument that the claims are barred by a settlement
10:32:36 agreement entered between the parties in 2007.
10:32:39 I am going to grant the motion in part and deny
10:32:43 it in part.
10:32:44 When reviewing a motion to dismiss pursuant to

Rule 12(b)(6), the Court conducts a two-part analysis. First, the Court separates the factual and legal elements of a claim, accepting "all of the complaint's well-pleaded facts as true, but [disregarding] any legal conclusions." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009)(citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678). Second, the Court determines that whether the facts alleged in the complaint are sufficient to show ... a 'plausible claim for relief.'" Id. (quoting *Iqbal*, 556 U.S. at 679). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence in to support the claims." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997)[(quoting *Scheuer v. Rhoades*, 416 U.S. 232, 236 (1974)]. The court may grant a motion to dismiss only if, after "accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, [the] plaintiff is not entitled to relief." [*Id.*(citations omitted.)].

Here, we have contract interpretation at issue. The release in section 4.1 is broad and includes "any and all claims ... whether accrued or unaccrued, known or unknown, suspected or unsuspected ... which any of the [M2T] Parties has asserted, could have asserted, or could assert as of the effective date of [the] Agreement." It then

10:34:16 specifies that this includes "all matters raised in the
10:34:19 Lawsuit or any other matter involving, e.g., intellectual
10:34:23 property, proprietary rights, or other rights." The release
10:34:26 also specified that it included "any claims concerning SPX
10:34:31 impeller design relative to the Lawsuit" and "any current or
10:34:36 future claims concerning" listed impellers, including the
10:34:40 A245 impeller, and any claims relating to listed patents,
10:34:44 including U.S. Patent No. 7,114,844."

10:34:48 [M2T] also released SPX from "any claims
10:34:52 concerning the SPX Parties' future activities with respect
10:34:56 to technology of which the M2T Parties knew or could have
10:35:00 known from provided information or publicly available
10:35:04 information."

10:35:05 Dismissal is proper only if the defendant's
10:35:08 interpretation is the only reasonable construction as a
10:35:12 matter of law. When parties present differing - but
10:35:15 reasonable - interpretations of a contract term, the Court
10:35:18 may need to look to extrinsic evidence to understand the
10:35:21 parties' agreement. And that cannot proceed on a motion to
10:35:24 dismiss.

10:35:25 As to Count 1 asserting infringement of M2T's
10:35:30 '959 Patent by SPX's A245 impeller, I am granting the
10:35:34 motion. The '959 Patent issued two years before the
10:35:38 settlement agreement was entered and the A245 impeller was
10:35:45 known at the time of the agreement - in fact, it was

specified in the release.

Similarly, as to Count 5, seeking declaratory judgment as to the invalidity of SPX's '844 Patent, Plaintiff has conceded that this count should be dismissed, and I am granting the motion. The patent issued prior to the settlement agreement. The declaration at issue and the inventorship of that patent was known prior to the settlement agreement, and the patent clearly falls within the release language under any reasonable interpretation.

As to the other counts, I am denying the motion. Both parties have presented me with reasonable interpretations of the settlement agreement as to how it applies to those counts - including with regard to the release language in section 4.1. I cannot resolve those issues on a motion to dismiss. And thus, I will deny the motion.

To the extent that I have granted the motion, I will do so without prejudice so that if things change as Plaintiff suggested, its suggestion that it would have the right to assert defenses if Defendant asserts certain counterclaims, for example, and Plaintiff comes up with facts sufficient to meet a pleading standard, it may attempt to replead the dismissed counts.

Is there anything else that we need to address today?

10:37:03 **MR. BUKOWSKI: No, Your Honor.**

10:37:06 **MR. SHEEHAN: Your Honor, we also had a claim for attorney's fees in our motion.**

10:37:10 **THE COURT: Yes. I'm going to deny that.**

10:37:12 **MR. SHEEHAN: Thank you, Your Honor.**

10:37:16 **THE COURT: Any other issues?**

10:37:21 **MR. BUKOWSKI: I guess the only other issue, Your Honor, as the Court may recall, we had submitted a stipulation to postpone taking discovery for several weeks after today. In light of the Court ruling on the pending motion today, and I don't know if counsel would agree that we could commence discovery on the remaining claims.**

10:37:44 **THE COURT: Why don't you guys discuss that. It doesn't seem like it's ripe for me to deal with. You guys can discuss it and work something out.**

10:37:52 **MR. BUKOWSKI: Very good, Your Honor.**

I hereby certify the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Dale C. Hawkins
Official Court Reporter
U.S. District Court